



An
Bord
Pleanála

Inspector's Report

ABP-305151-19

Development	Amendment to previous approved Planning Reg Ref: FW17A/0112 for a mixed use development
Location	Ongar House, No. 1 Ongar Square, Dublin 15
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	FW19A/0019
Applicant(s)	Sorallon Limited
Type of Application	Permission
Planning Authority Decision	Grant permission (17 no. conditions)
Type of Appeal	First Party (S.48 & S.49)
Appellants	Sorallon Limited
Inspector	Conor McGrath

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1.0 Introduction

- 1.1. This first party appeal relates to two financial contribution conditions attached to the decision of the planning authority to grant permission for the proposed development.
- 1.2. The appeal site is located in Ongar Village, Dublin 15 and relates to amendments to a previously permitted development in Ongar House, at the southwestern end of main street. Permission has previously been granted for mixed use development on the site, including retail / cafe at ground floor level new extension to side and ancillary basement accommodation, and 9 no. residential units at ground, first and new second floor levels.

2.0 Proposed Development

- 2.1. The proposed development relates to amendments to the development permitted under planning ref. FW/17A/0112, comprising:
 - Amended location and layout of ground floor apartment & internal alterations to first and second floor apartments.
 - Amendments to the cafe / restaurant in the side extension to include use for the sale of hot and cold food for consumption on and off the premises.
 - New signage.
 - Sub-division of basement and change of permitted storage to commercial use.
 - Amendments to layout of ground floor commercial / retail unit.

3.0 Planning Authority Decision

3.1. Decision

- 3.2. The planning authority decided to grant permission of the proposed development subject to 17 no. conditions including the following:
 2. The terms and conditions of the grant of permission under reg. ref. FW17A/0112 shall be complied within full in the course of the development

herein permitted.....and shall expire on the same dates as the expiry date granted under FW17A/0112.

15. Financial contribution of €40,352 in lieu of open space provision toward the cost of amenity works in the area based on a shortfall of 687.5-sq.m. of open space.
16. The developer shall pay the sum of €178,612 to the planning authority in respect of the Clonsilla to Dunboyne (Pace) Railway line under the Supplementary Development Contribution Scheme.
17. The developer shall pay the sum of €117,167 to the planning authority as a contribution towards expenditure in respect of public infrastructure and facilities benefitting the area as provided for in the Contribution Scheme for Fingal County.

3.3. Planning Authority Reports

3.3.1. Planning Reports

Following receipt of further information, the planning officer's report noted that the development was consistent with the proper planning and sustainable development of the area and that any outstanding issues can be addressed by way of condition.

3.3.2. Other Technical Reports

- Transport: No objection subject to conditions.
- EHO: No objection subject to conditions.
- Water Services: No objection subject to conditions.
- Conservation Officer: No comment.
- Parks: Recommended conditions included a tree bond of €30,000
- Contribution Calculation Sheet:

Section 48		
Residential	€92.13 / sq.m. x 854-sq.m. =	€78,679
Commercial	€71.94 / sq.m. x 535 =	€38,488
Total		€117,617
Open space shortfall	ref. Planner's report 687.5-sq.m.	
Class 1 (75%)	515.65-sq.m. / 0.1274ac @ €200k/ac	€25,485

Class 2 (25%)	171.87-sq.m. / 0.0425ac @€350k/ac	€14,866
Total		€40,352
Clonsilla / Dunboyne S.49 Levy		
Residential	0.4391ha @ €167,509 / ha =	€73,555
Commercial	0.275 ha @ €3814,901 / ha =	€105,056
Total	0.714ha	€178,612

3.4. Prescribed Bodies

Irish Water: No objection subject to condition

4.0 Planning History

PA ref. F03A/0607

Permission granted for demolition of the remains of Ongar House, a protected structure following a fire, and construction of a replacement two-storey over basement building in the form of the original house and an extension to side (1,174sq.m. approx.). New uses were to include restaurant, bar and function room and ancillary works. The stated site area was 760-sq.m.

Condition no. 17: Financial contribution of €58,700 toward road improvements and traffic management proposals (€50 x 1174-sq.m.).

Condition no. 18: Financial contribution of €12,005 toward public services. (1174-sq.m. or 12,637-sq.ft. x €950) / sq.ft) / 1000.

PA ref. FW16A/0190

Permission refused for development comprising

- redevelopment and change of use of Ongar House, from approved use under F03A/0607 to use as retail / cafe on part of ground and basement levels, with residential use on ground & first floor and new additional second floor to contain 8 No. apartments with balconies.
- two storey annex to side to contain retail/cafe on ground floor, with 1. No apartment on first floor with roof terrace.
- 3 storey apartment building containing 4 No. apartments.

The reasons for refusal related to Visual impact, pedestrian and vehicle conflicts, deficiencies in open space and inadequate internal storage for dwelling units.

PA ref. FW17A/0112:

Permission granted for development on the subject site comprising:

- redevelopment and change of use of Ongar House, from last approved use of restaurant, license bar, (F03A/0607) to use as part retail/cafe & residential, to include retail/cafe on part of ground floor with ancillary servicing facilities at basement level,
- residential use on remainder of ground floor, first floor and new additional second floor to contain 9 no. apartments, with balconies to all elevations.
- single storey annex building to the side of existing house to contain retail/cafe on ground floor.
- site works to include revised roadways to provide new car parking layout, with bin stores & bike stores and ancillary site works.

The stated site area was 0.715ha.

Conditions included:

Condition no. 22: Financial contribution of €40,352 in lieu of open space provision toward amenity works based on a shortfall of 687.5-sq.m.

Condition no. 23: S.49 Development Contribution of €118,510 in respect of the Clonsilla to Dunboyne (Pace) Railway line.

Condition no. 24: Contribution of €40,727 toward public infrastructure and facilities in the area as provided for in the Contribution Scheme for Fingal.

The financial contribution calculation sheet relating to this decision notes the following:

Floor area of proposed works	Retail / café 129-sq.m. Residential 403-sq.m.
S.48 Development Contribution Scheme	129-sq.m. x €63.13 = €8,144

		403-sq.m. x €80.85 = €32,583 Total = €40,727
Open Space Shortfall	Class 1(75%) Class 2(25%)	515.62-sq.m. €25,485.18 171.875-sq.m. €14,866.35 Total €40,352
S.49 Dunboyne – Clonsilla		
Residential 0.6131ha x €167,509 / ha Commercial 0.0414ha x €381,901 / ha Total area 0.6545ha		Residential €102,699.77 Commercial €15,810.70 Total payable €118,510

PA ref. FW/19A/0155:

Application lodged on 12/09/2019 for permission for amendments to this current application (FW19A/0019) to include retention of increase in area (35m²) and revised layout of single-storey annex building & amendments to associated elevations and associated site works. Permission granted.

5.0 Policy Context

5.1. Fingal County Development Plan 2017 - 2023

The lands are zoned primarily for Local Centre Use (LC): Protect, provide for and / or improve local centre facilities. Retail, café, restaurant and residential uses are permissible in this zone.

Part of the lands are zoned as Open Space, to Preserve and provide for open space and recreational amenities.

5.2. Fingal County Council Development Contribution Scheme 2016-220

The rates of contributions effective from 1st January 2019 are as follows:

- Residential ~~€~~**2.13** per m²
- Non-residential ~~€~~**1.94** per m²

Calculations are to be based on gross floor area.

Financial contributions in lieu of open space will be levied at the following rates;

Class I - €100,000 / acre to purchase plus €100,000 / acre for development.

Class II - €250,000 per acre to purchase land in residential areas, plus €100,000 per acre for development.

Section 10 identifies exemptions and reductions, including:

- (n) Internal layout alterations where no additional floor area is created and external walls are not being removed.
- (r) Changes of use are exempt unless the revised use constitutes a substantial intensification of use of the building or services.

5.3. Supplementary Development Contribution Scheme for the Re-opening of the Navan to Dublin Railway Line Phase 1 - Clonsilla to Dunboyne – (Pace)

The effective rates of contribution are as follows:

- Residential €167,509 per gross site hectare
- Commercial €381,901 per gross site hectare

For development that is mixed-use in nature the residential and commercial contributions shall be calculated in the following way: -

The gross floor area of the proposed mixed-use development site devoted to residential and commercial land uses shall be calculated and a percentage split of residential to commercial development derived. This pro-rata split shall be applied to the site area of the mixed-use site and the levy charged accordingly.

Exemptions are provided for in section 10, in respect of smaller scale development, public buildings, charitable organisations and recreational development.

5.4. Natural Heritage Designations

- 5.4.1. The appeal site is not zoned for any natural heritage conservation purposes. The closest site is Rye Water Valley/Carnton SAC, located approx. 4.5km southeast of the site.

6.0 The Appeal

- 6.1. This is a first party appeal against conditions no. 16 and 17 of the planning authority decision to grant permission for the proposed development. The first party make the following points in their appeal:

Condition no. 16: S.49 Contribution Scheme.

- The planning application site comprised an area of 0.401ha whereas the contribution was applied to an area of 0.701ha.
- The site area used to calculate the contribution was therefore incorrect and the terms of the scheme have not been properly applied.

Condition no. 17: S.48 Development Contribution Scheme

- The scheme provides for exemptions in respect of alterations to internal layout where no additional area is created and for changes of use where there is no substantial intensification of use.
- Contributions were calculated on the basis of the floor area for each use on the site, which were incorrect.
- Parent permission F03A/0607 relates to demolition and reconstruction of Ongar House. That permission was subject to development contributions in respect of roads and public services.
- The further permission granted in 2017 (Ref. F17A/0112), was subject to a S.48 Development Contribution condition of €40,727 based on the new build element of the scheme (403-sq.m.) residential and 129-sq.m. cafe.
- The subject application relating to amendments to that scheme has been charged €117,167.

The proposed amendments to F17A/0112 comprise:

- 1: Amendments to elevations and layout of single-storey extension, involving a 36-sq.m. change from office to restaurant use: As this is not a substantial intensification of use, this is exempt from the requirement to pay contributions.
2. Sub-division of separate commercial units in the basement: This was ancillary space serving ground floor retail and restaurant uses. There is no additional space created. This permission provides for the creation of a number of separate commercial units. As these were originally in commercial use, no substantial intensification arises.
3. Modification to the layout of ground floor retail / commercial unit relating to the reallocation of permitted ground floor commercial and residential uses: Commercial use increases by 60-sq.m. but there is no change in the overall floor area of the building. This would not constitute a substantial intensification of use and is exempt.
4. Revisions to the layout of apartments involve no change to gross residential floor area and are therefore exempt.

6.2. Planning Authority Response

The planning authority make the following comments in response to the first party appeal:

Condition no. 17 – Section 48

- The planning authority acknowledge that in determining the contributions payable under section 48, it was incorrectly determined that Change of Use levies payable under F03A/0607 had not been discharged.
- In this regard, and given the small floorarea subject to change of use from residential to commercial (60-sq.m.), the planning authority accept that the S.48 Contribution under condition no.17 should be removed from the planning permission.

Condition no. 16 - Section 49

- Different considerations apply to S.49 Development Contributions.
- PA ref. FW17A/0112 was charged €118,510.47 under S.49. The planning authority calculation was incorrectly based on a gross site area of 0.6545ha rather than a correct area of 0.7142ha. The pro-rata calculation for residential and commercial uses were also incorrect.
- In examining the subject application this error became apparent. The correct figure based on a correct site of 0.7142ha would be as follows:

Residential	0.541ha @ €167,509 / ha =	€90,626
Commercial	<u>0.1732ha</u> @ €381,901 / ha =	<u>€66,138</u>
Total	<u>0.7142ha</u>	<u>€156,763</u>

- Based on the applicant's argument that the relevant site area should be 0.401ha, the contribution payable would be €88,018.
- This application is a revision to PA ref. FW17A/0112, which includes amendments to the whole building, both internal and external, but the applicants have chosen to reduce the footprint of the application.
- As this application is clearly for amendments to the whole development, it is correct to apply the development levy to the original site area from FW17A/0112.
- Allowing a reduced site area to be used for calculating contributions would set an undesirable precedent for future applications and subsequent amendments.
- The planning authority would be willing to accept payment of the original incorrect S.49 contribution charged under PA ref. FW/17A/0112 and to remove the S.49 levy condition from this decision (PA ref. FW19A/0019).

6.3. Further Responses

In response to the planning authority submission, the first party make the following comments:

- Based on the amounts levied under conditions no. 16 and 17, it is clear that they were intended to supercede conditions no. 23 and 24 of FW17A/0112 and this appeal should be determined on this basis.

- As set out in the planning authority submission, condition no. 17 should be removed from the grant of planning permission.
- In relation to condition no. 16, supplementary development contributions should be calculated on the basis of the subject application site area, 0.401ha. The planning authority have estimated that this would give rise to a contribution of €88,081.
- In validating the planning application, the planning authority did not raise any issues with the site area as outlined in red.
- The planning authority now argue, however, that the site area indicated in the application was incorrect but do not regard the application as invalid.
- Lands in the applicant's ownership include areas zoned as open space. Such open space areas were inadvertently included in the site area for the 2017 commercial / residential development. Such lands have no development potential.
- The basis for the S.49 supplementary contribution scheme is that that the railway will add value to property and land.
- As open space lands will not benefit from the infrastructure project or obtain added value, they should not be included for the purposes of calculating S.49 contributions due.
- The subject application therefore correctly excludes these lands from the site.
- The contribution charged under condition no. 16 should therefore be amended to a value of €88,081.

7.0 Assessment

- 7.1. The appeal relates to two conditions. Condition no. 16 requires the payment of a Section 49 Supplementary Development Contribution and condition no. 17 requires the payment of a financial contribution in accordance with the S.48 Development Contributions Scheme.

- 7.2. Section 48(10)(b) of the 2000 Planning Act provides for an appeal where the applicant for permission considers that the terms of a Contribution Scheme or a Supplementary Contributions Scheme have not been properly applied. Appeals which include or relate solely to this matter will be dealt with under section 37(1) or 139 of the 2000 Planning Act, as amended, as appropriate. Where the appeal relates solely to this matter and there are no other appeals involved, the Board may only determine the matter under appeal.
- 7.3. **Condition no. 16:**
- 7.3.1. The first party argue that the supplementary development contribution was calculated on the basis of an incorrect site area. It is argued that the correct site area for the purposes of this calculation is the area of the current application site FW19A/0019, stated to be 0.401ha. The appeal states that the calculation was incorrectly based on a site area of 0.701ha. I note that the development contribution calculations undertaken by the planning authority in this case were based, in fact, on a site area of 0.7142ha.
- 7.3.2. The subject application relates to “Amendments to previous approved planning ref no. FW17A/0112”, which application site reflects the lands outlined in blue in the current application. Condition no. 23 of the parent permission required the payment of a Supplementary Development Contribution of €118,510. The planning authority have advised that there was an error in the calculation of that contribution as it was calculated on an area of 0.6545ha rather than the correct application site area of 0.7142ha. The correct figure is reflected in condition no. 16 of the subject application.
- 7.3.3. This application clearly relates to amendments to the permitted development and does not seek to revisit the principle of the permitted development. I consider that the subject application is subsidiary to the parent permission and does not stand on its own. To recalculate development contributions for a permitted development based on the site area of an amendment application is not appropriate. To accept the appellants argument in this regard would undermine the application of the Supplementary Development Contribution Scheme on the original application and set an undesirable precedent for future development.

- 7.3.4. Having regard to condition no. 2 of the planning authority decision in this case (FW19A/0019), I do not consider that there is any requirement for the restating of the S.49 supplementary contribution condition in this case. The planning authority now propose that condition no. 16 be omitted and that the contributions set out in conditions attaching to the original parent permission (FW17A/0112) should be paid. I regard this as the appropriate response to the issues raised in this case.
- 7.3.5. In their response to planning authority comments, the first party further argue that lands within the original application site which are zoned for open space should not be included in the recalculation of this development contribution as they will not benefit from the S.49 infrastructure project. I note the provisions of S.49(3A) in this regard. Having regard to the comments and conclusions above in relation to this amendment application, however, I do not believe that the calculations under condition no. 23 of the parent permission can be revisited at this time.
- 7.3.6. I therefore conclude that the planning authority should be directed to remove condition no. 16.

7.4. Condition no. 17

The planning authority have accepted the appellants arguments with regard to the application of financial contributions in accordance with the development contributions scheme. It is noted that contributions were charged and paid under planning ref. F03A/0607, and that additional contributions were charged under PA ref FW17A/0112 in respect of the new build elements of that permission. While a change of use is acknowledged, given its small area the planning authority have agreed that this would not be liable to development contributions. The development contribution scheme provides for an exemption in this regard.

I recommend therefore that the appeal against the condition be upheld, and in agreement with the planning authority appeal response, that Condition no. 17 be removed from the decision to grant permission.

8.0 Appropriate Assessment Screening

- 8.1. Having regard to nature of the case which relates to an appeal against conditions, the scale of development proposed and separation from any European Site, no Appropriate Assessment issues are considered to arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

- 9.1. Having considered the submissions and documentation received in relation to this appeal, and the planning history relating to this site, I consider that the appeal can be addressed under section 139 of the Planning and Development Act 2000 as amended. I recommend that the planning authority be directed under subsection (1) of section 139 of the Planning and Development Acts, 2000-2018, to REMOVE conditions number 16 and number 17 and the reason therefor.

10.0 Reasons and Considerations

- 10.1. Having regard to the terms of the Fingal County Council Development Contribution Scheme 2016 - 2022 and the Supplementary Development Contribution Scheme for Re-opening of the Navan to Dublin Railway – Phase 1 Clonsilla to Dunboyne (Pace), the planning history relating to the site and the nature of the proposed development being amendments to a permitted development, it is considered that the terms of the Development Contribution Scheme have not been properly applied and furthermore that the proposed development is subject to compliance with the terms and conditions of the parent permission under planning ref. FW17A/0122. It is therefore considered, that conditions no. 16 and no. 17 are unwarranted and should be removed.

Conor McGrath
Senior Planning Inspector
03/12/2019